

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

MORRISON ENTERPRISES,)

LLC, and COOPERATIVE)

PRODUCERS, INC.,)

Defendants.)

Civil Action No. _____

COMPLAINT

1. The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") files this complaint and alleges as follows:

NATURE OF THE ACTION

2. This is a civil action brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). The United States seeks an order requiring the Defendants to implement the EPA's selected environmental remedy for Operable Unit 6 ("OU6") of the Hastings Ground Water Contamination Site (the "Site"), located in and around Hastings, Nebraska, and requiring the Defendants to reimburse the United States, pursuant to Section 107(a) of CERCLA, 42

U.S.C. § 9607(a), for costs incurred, and to be incurred, in response to releases and threatened releases of hazardous substances into the environment at and from the FAR-MAR-CO Subsite of the Hastings Groundwater Site.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C.

§ 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANTS

5. At times relevant, defendants Morrison Enterprises, LLC (“Morrison”), and Cooperative Producers, Inc. (“CPI”), have owned and/or operated a facility at the Subsite, within the meaning of sections 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (a)(2).

6. Defendant Morrison is the corporate successor of Morrison-Quirk Grain Corporation (“Morrison-Quirk”).

7. Defendant Morrison is a limited liability company formed and existing under the laws of the State of Nebraska and is, therefore, a person under 42 U.S.C. § 9601(21).

8. Defendant CPI is a corporation formed and existing under the laws of the State of Nebraska and is, therefore, a person under 42 U.S.C. § 9601(21).

LAW GOVERNING CLAIMS FOR RELIEF UNDER CERCLA

9. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of such hazardous substance.

10. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA pursuant to Executive Order No. 12580, 52 Fed. Reg. 2,923 (January, 1987), reprinted in 42 U.S.C.A. § 9615.

11. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides, in pertinent part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

12. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

“Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or

entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances,

* * *

shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan”

13. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides:

“In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

GENERAL ALLEGATIONS

14. The Site consists of a contaminated aquifer and the contaminated soils which overlie the aquifer in the City of Hastings, Adams County, in south-central Nebraska. The aquifer is the source of drinking water for the residents of Hastings.

15. The Site was listed on the National Priorities List on June 10, 1986 (51 Fed. Reg. 21054. See 40 C.F.R. Part 300, Appendix B. The National Priorities List is a national list of hazardous waste sites posing the greatest threat to health, welfare and the environment. The National Priorities List has been established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

16. EPA divided the Site into six subsites based on the sources of the ground water contamination. The EPA labeled each source with a subsite name.

17. The EPA further divided the subsites into twenty operable units to address soil and ground water contamination at the Site. One of those operable units at the FAR-MAR-CO

Subsite, OU6, is the subject of this Complaint, and addresses the residual ground water contamination emanating from the FAR-MAR-CO Subsite.

18. The FAR-MAR-CO Subsite is part of the Hastings Groundwater Contamination Site located in and around Hastings, Nebraska. The FAR-MAR-CO Subsite is approximately seventy acres and is located on the eastern edge of Hastings, Nebraska between the Burlington Northern Santa Fe Railway and Highway 6 in Adams County.

19. Between approximately 1954 and 1975, Morrison-Quirk, the predecessor to Morrison, conducted grain merchandising operations at the Subsite. During its operations, Morrison-Quirk used Max-Kill 10, a liquid grain fumigant containing carbon tetrachloride (“CCl₄”) and ethylene dibromide (“EDB”), both hazardous substances under CERCLA. 40 C.F.R. § 302.4. On or about May 1959, grain dust exploded, causing the release of approximately 997 gallons of liquid grain fumigant into the environment.

20. In 1975, FAR-MAR-CO, Inc., purchased the property and continued the grain operations. In 1976, FAR-MAR-CO, Inc., merged into Farmland Industries, Inc. (“Farmland”). Farmland continued operating a grain elevator business at the Subsite.

21. In 1990, Farmland leased the property to CPI. In 1991, Farmland sold the property to CPI.

22. CCl₄, EDB, and other hazardous substances released or disposed of at the Subsite have migrated to the groundwater below and surrounding the Subsite.

23. There were and are "releases," as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and the threat of continuing releases, of "hazardous substances," as defined in 42 U.S.C. § 9601(14), into the environment at the Subsite.

24. The releases and threatened releases of hazardous substances at the Subsite caused the United States to incur costs of "response" within the meaning of 42 U.S.C. § 9601(25).

25. The Site is a "facility" within the meaning of 42 U.S.C. § 9601(9).

CLAIM FOR RELIEF

26. The preceding allegations are included in this claim for relief.

27. Each of the Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

28. Each of the Defendants is an "owner or operator" of a facility within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

29. The United States has incurred response costs in connection with response actions at the Subsite, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. The United States continues to incur response costs, including costs for implementation of environmental response actions and oversight of such environmental response actions performed by parties pursuant to agreements they have entered into with EPA.

30. Morrison and CPI are jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs incurred by the United States in connection with the Subsite.

REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court:

1. Enter judgment against the Defendants jointly and severally, for all response costs incurred by the United States in connection with the Subsite;
2. Enter a declaratory judgment of liability against each Defendant that will be binding in any action to recover further response costs incurred by the United States in connection with the Subsite;
3. Award the United States its costs in this action; and
4. Grant such other and further relief as is appropriate.

REQUEST FOR TRIAL LOCATION

The United States of America hereby requests that trial of the above and foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

Respectfully submitted,

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